

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 16, 2010

Lyle W. Cayce
Clerk

No. 09-40934

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

VICTOR JAVIER JIMENEZ-LOPEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:09-CR-145-1

Before BENAVIDES, PRADO, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Victor Javier Jimenez-Lopez appeals his 57-month sentence following his guilty plea conviction for illegal reentry after deportation. Jimenez-Lopez argues that the district court plainly erred by sentencing him pursuant to 8 U.S.C. § 1326(b)(2), which increases the statutory maximum sentence for aliens previously deported following an aggravated felony conviction. He, therefore, asks that his case be remanded for reformation of the judgment to reflect his conviction under § 1326(b)(1).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Jimenez-Lopez argues that his prior state conviction for drug possession does not qualify as an aggravated felony because the Government did not prove that he received the benefit of notice and procedural safeguards equivalent to those outlined in 21 U.S.C. § 851 when he was convicted of that crime. As Jimenez-Lopez correctly concedes, this argument is foreclosed by our decision in *United States v. Cepeda-Rios*, 530 F.3d 333, 335-36 n.11 (5th Cir. 2008). The Government's motion for summary affirmance is GRANTED; its alternative motion for an extension of time to file a brief is DISMISSED as MOOT.

AFFIRMED.